

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

THE ART INSTITUTE OF PHILADELPHIA
LLC, *et al.*,
Debtors.

Chapter 7
Case No. 18-11535 (LSS)

(Jointly Administered)

GEORGE L. MILLER, Chapter 7 Trustee,

Plaintiff,

JURY TRIAL DEMANDED

– against –

Adv. Proc. No. 20-50627 (LSS)

TODD S. NELSON, JOHN R. McKERNAN,
SAMUEL C. COWLEY, EDWARD WEST,
MARK A. McEACHEN, FRANK JALUFKA,
J. DEVITT KRAMER, MARK NOVAD, JOHN
DANIELSON, AND MICK BEEKHUIZEN,

Defendants.

**DECLARATION IN SUPPORT OF MOTION OF DEFENDANTS
JOHN R. MCKERNAN, EDWARD WEST, AND MICK BEEKHUIZEN
TO DISMISS THE TRUSTEE’S COMPLAINT**

I, MICHAEL L. KICHLIN, declare pursuant to 28 U.S.C. § 1746 as follows:

I am a partner of the law firm Dechert LLP, attorneys for Defendants John R. McKernan, Edward West, and Mick Beekhuizen. I submit this Declaration in support of the Motion to Dismiss the Trustee’s Complaint, submitted by Defendants and their respective counsel. I have personal knowledge of the facts asserted herein and could testify to those facts if called to do so.

1. Attached hereto as Exhibit 1 is a true and correct copy of EDMC’s Report of the Litigation Committee (“SLC Report”), dated May 4, 2011, which was publicly filed in both *Oklahoma Law Enforcement Retirement System v. Nelson*, No. GD-12-

008785 (Pa. Ct. Comm. Pleas) and *Bushansky v. Nelson*, No. 2:12-cv-01101-TFM, ECF No. 27-16 (W.D. Pa.).

2. Attached hereto as Exhibit 2 is a true and correct copy of EDMC Report of the Litigation Committee (“SLC Report”), dated May 31, 2012, which was publicly filed in both *Oklahoma Law Enforcement Retirement System v. Nelson*, No. GD-12-008785 (Pa. Ct. Comm. Pleas) and *Bushansky v. Nelson*, No. 2:12-cv-01101-TFM, ECF No. 27-21 (W.D. Pa.).

3. Attached hereto as Exhibit 3 is a true and correct copy of the Amended Complaint by Oklahoma Law Enforcement Retirement System (“OLERS”), which was which was publicly filed in *Oklahoma Law Enforcement Retirement System v. Nelson*, No. GD-12-008785 (Pa. Ct. Comm. Pleas) on September 27, 2012.

4. Attached hereto as Exhibit 4 is a true and correct copy of EDMC’s Motion to Dismiss, which was which was publicly filed in *Oklahoma Law Enforcement Retirement v. Nelson*, No. GD-12-008785 (Pa. Ct. Comm. Pleas) on October 17, 2012.

5. Attached hereto as Exhibit 5 is a true and correct copy of the Memorandum and Order of the Court in *Oklahoma Law Enforcement Retirement System v. Nelson*, No. GD-12-008785 (Pa. Ct. Comm. Pleas) (“OLERS Op.”), dated July 16, 2013.

6. Attached hereto as Exhibit 6 is a true and correct copy of the Supplemental Report of the Litigation Committee of EDMC (“SLC Report”), dated October 15, 2013, which was publicly filed in *Oklahoma Law Enforcement Retirement System v. Nelson*, No. GD-12-008785 (Pa. Ct. Comm. Pleas).

7. Attached hereto as Exhibit 7 is a true and correct copy of the Additional Report of the Litigation Committee of EDMC (“SLC Report”), dated January 9, 2014, which was publicly filed in *Oklahoma Law Enforcement Retirement System v. Nelson*, No. GD-12-008785 (Pa. Ct. Comm. Pleas).

8. Attached hereto as Exhibit 8 is a true and correct copy of the Memorandum and Order of the Court in *Oklahoma Law Enforcement Retirement System v. Nelson*, No. GD-12-008785 (Pa. Ct. Comm. Pleas) (“*OLERS Op.*”), dated August 25, 2015.

9. Attached hereto as Exhibit 9 is a true and correct copy of the derivative complaint by Stephen Bushansky, which was publicly filed in *Bushansky v. Nelson*, No. 2:12-cv-01101-TFM, ECF No. 1 (W.D. Pa.) on August 3, 2012.

10. Attached hereto as Exhibit 10 is a true and correct copy of the stipulated voluntary dismissal in *Bushansky v. Nelson*, No. 2:12-cv-01101-TFM, ECF No. 63 (W.D. Pa.), dated September 23, 2015.

11. Attached hereto as Exhibit 11 is a true and correct copy of EDMC’s Memorandum in Support of Defendants’ Motion for Summary Judgment, which was publicly filed in the Government *qui tam* action, *United States v. Education Management Corp.*, No. 2:07-cv-00461-TFM, ECF No. 373 (W.D. Pa.), on April 10, 2014.

12. Attached hereto as Exhibit 12 is a true and correct copy of the EDMC Bylaws excerpted at § 2.8.

13. Attached hereto as Exhibit 13 is a true and correct copy of the Severance Agreement and Release between Mick Beekhuizen and EDMC, signed February 29, 2016.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 14, 2020

/s/ Michael. L. Kichline

Michael L. Kichline